

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 01/06/2020

----- X
JENEICE EDMOND, :
 :
 :
 Plaintiff, :
 :
 :
 -against- :
 :
 :
 LIVE WELL FINANCIAL, INC.; MORTGAGE :
 ELECTRONICS REGISTRATION SYSEMS, :
 INC.; SECRETARY OF HOUSING AND :
 URBAN DEVELOPMENT (HUD); CHAMPION :
 MORTGAGE; GENERATION MORTGAGE :
 COMPANY (GMC); NATIONSTAR :
 MORTGAGE LLC. *doing business as* :
 CHAMPION MORTGAGE; NATIONSTAR :
 REO SUB 1B, LLC; MNB DEVELOPERS LLC.; :
 GERALD S. LEONESCU, ESQ. REFEREE; :
 SCHILLER KNAPP, LEFKOWITZ & :
 HERTZEL, LLP; JOHN “DOES” AND JANE :
 “DOES” 1 THROUGH 100; :
 :
 Defendants. :
----- X

19-CV-703(VEC)(SN)

ORDER

VALERIE CAPRONI, United States District Judge:

Plaintiff Jeneice Edmond, who administers the estate of Clara Edmond, commenced this *pro se* action alleging fraud and racketeering by various entities allegedly involved in Clara Edmond’s mortgage and the subsequent foreclosure proceeding. *See* Compl. (Dkt. 1) ¶¶ 112–17. Defendants were allegedly part of a scheme to defraud Clara Edmond by intentionally misappraising and inflating the value of the mortgaged property, which caused Clara Edmond to agree to a loan far in excess of the property’s actual value. *See id.* at 2 & ¶¶ 1–4. The Court referred this matter to Magistrate Judge Sarah Netburn, Dkt. 4, who recommended that the Court grant the motions to dismiss filed by five of the defendants (“Moving Defendants”); as to the

remaining defendants except Live Well Financial, Inc.,¹ Judge Netburn recommended dismissal based on failure to serve. *See* Report & Recommendation (R&R) (Dkt. 30) at 19. Judge Netburn also ordered Plaintiff to propose an amended complaint if Plaintiff believes that the defects identified in the R&R could be cured, and to either provide proof of service or show good cause why Plaintiff's time to serve should be extended. *See* R&R (Dkt. 30) at 19. Plaintiff was required to respond to Judge Netburn's instructions within 14 days of the R&R, which was issued on December 2, 2019. As of the date of this Order, 35 days have elapsed, and the Court has received no objection to the R&R or any other response from Plaintiff.

Because no objections were timely filed, the Court "need only find that there is no clear error on the face of the record in order to accept the Report and Recommendation." *Phillips v. Reed Grp., Ltd.*, 955 F. Supp. 2d 201, 211 (S.D.N.Y. 2013) (citation omitted); *McChriston v. Diversified Consultants*, No. 18-CV-185, 2019 WL 2912172, at *1 (S.D.N.Y. July 8, 2019). Regarding Plaintiff's Racketeer Influenced and Corrupt Organizations Act (RICO) claims (Counts I and II), Judge Netburn recommended dismissal because Plaintiff failed to allege a pattern of racketeering activity or the existence of an "enterprise." R&R (Dkt. 30) at 8–12 (explaining that Plaintiff failed to allege existence of coordination between defendant entities or more than one instance of wrongdoing). As for Plaintiff's third and final claim, which sounds in fraud, Judge Netburn recommended dismissal because Plaintiff failed to allege fraud with particularity as required by Rule 9(b) of the Federal Rules of Civil Procedure, in part because Plaintiff failed to allege that Defendants knew that the appraisal value had been "inflated." R&R (Dkt. 30) at 17.

¹ Live Well Financial, Inc. is the subject of an automatic litigation stay due to the filing of a bankruptcy petition. *See* Dkts. 28–29.

Upon careful review, the Court finds no clear error in the R&R, which is adopted in full. The pending motions to dismiss at docket entries 14 and 15 are therefore granted, and the Defendants Schiller Knapp, Lefkowitz & Hertz, LLP; Mortgage Electronic Registration Systems, Inc.; Champion Mortgage; Nationstar Mortgage LLC d/b/a Champion Mortgage; and Nationstar Reo Sub 1B, LLC, are hereby DISMISSED with prejudice from this action. Furthermore, because Plaintiff has failed to provide either proof of service or even an explanation of her attempts to effectuate service, the Court agrees that the case must be DISMISSED as to all remaining defendants without prejudice, except Live Well Financial, Inc., which is the subject of a litigation stay due to bankruptcy proceedings. Additionally, because Judge Netburn has provided Plaintiff an opportunity to submit a proposed amended complaint in response to the R&R and Plaintiff has not done so, the Court declines to grant further leave to amend.²

Live Well Financial, Inc. must provide a status update on the first business day of every sixth month, as to whether the bankruptcy stay has been lifted; the first such report shall be due on **June 1, 2020**.

The Clerk of Court is respectfully directed to terminate the pending motions at docket entries 14 and 15 and terminate all defendants except Live Well Financial, Inc. from this action. The Clerk is further instructed to STAY this action because the only remaining claims have been

² The Court notes that, prior to the issuance of the R&R, Plaintiff attempted to file an amended complaint, which Judge Netburn rejected for reasons of futility. *See* Dkt. 29. That proposed amended complaint appears to abandon Plaintiff's RICO claims. *See* Dkt. 24-1 ¶¶ 60–88. Plaintiff's proposed amendment did not contain any allegations that would address the defects identified in the R&R. The Court further agrees with the R&R that any amendment as to claims against Schiller Knapp, Lefkowitz & Hertz, LLP, would be futile. *See* R&R (Dkt. 30) at 18.

stayed due to Live Well Financial, Inc.'s bankruptcy proceeding. The Clerk is also requested to mail a copy of this Order to Plaintiff and note mailing on the docket.

SO ORDERED.

Date: January 6, 2020
New York, NY



VALERIE CAPRONI
United States District Judge